

Waivers	First Name	Last Name	Claim Number
			W-16-0013
Amount	OGC Received Date	Assigned To	Assigned Date
\$4151.03	10/14/2016	Stephanie Rich	10/14/2016
EPA Decision	EPA Decision Date	Amount Approved	Status
DENIED	06/09/2017	CLOSED	
Appeal	Comments		
No			
Type			
Erroneous Promotion			

#### Attachments

Dear [REDACTED],

This is in response to your request for a partial waiver of Debt ID# 60190269190 in the amount of \$624.15. For the reasons set forth below, your waiver is denied.

#### Background

On 01/04/2016, you sent an email to your management notifying them that your paycheck for pay period 2016-01 was more than double your normal pay. Upon reviewing your information in the Federal Personal Payroll System, Human Resources (HR) realized that you had been accidentally promoted from a GS 14-03 to a GS 15-03 for pay period 2016-01 and retroactively promoted for pay periods 2015-22 through 26. The result of this error was reflected in your paycheck for pay period 2016-01, which included pay for a promotion to GS-15-03 for pay period 2016-01, and backpay for a promotion in 2015-22 through 26. HR fixed the error and advised you that you would be receiving a bill for the amount that you were overpaid.

On 01/19/2016, the Department of Interior's Interior Business Center (IBC) sent you a Bill for Collection in the amount of \$4,151.03. The bill states that you were overpaid as the result of a "correction processed by the payroll office, a correction to a personnel action that was processed by your agency, a thrift savings transaction." The bill lists the total gross amount of overpayment as \$4,641.60. From this gross amount, IBC subtracted the "applicable recoverables," which are amounts that EPA disbursed on your behalf and EPA was able to recover, thereby reducing your debt. The final amount that you owe is \$4,151.03.

On 02/04/16, you submitted a request for a partial waiver in the amount of \$624.15, wherein you state that a waiver is appropriate because the debt was "incurred due to no fault of my own, has caused me to work many hours to collect paperwork and background information on how it occurred and understand the subsequent consequences." In your request, you explain that the bill from IBC is \$524.15 greater than the difference between your net pay for 2016-01 and your net pay for 2015-26. You ask that this \$524.15 be

waived. You have also asked that an additional \$100 be waived for the estimated cost of mailing the waiver request.

#### Analysis

Under 5 U.S.C. § 5584, I have the authority to waive collection of erroneous payments or allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. Generally, an employee who knows or reasonably should have known that he or she was overpaid should be prepared to repay the debt and it is not against equity and good conscience to collect. B-227322, Sept. 19, 1988; B-223508, Dec. 24, 1986. Here, I find that it is not against equity and good conscience to collect the debt amount because you were fully apprised of the overpayment. Your Leave and Earnings Statement from pay period 2016-01 shows a gross payment of \$9,029.60, which was more than double your normal pay of \$4,388.00. You were therefore on notice that you were overpaid in a gross amount of \$4,641.60.

You believe that \$524.15 should be waived because your bill is \$524.15 greater than the difference between your net pay for 2016-01 and your net pay for 2015-26. However, the Comptroller General (CG) has consistently held that the amount of an employee's debt is the gross amount of the payment rather than the net amount deposited to his or her bank account. See B-261628, June 13, 1996; B-234731, June 19, 1989; B-202136, July 20, 1981. Here, the total amount of your debt, \$4,151.03, is comprised of not only the amount that you received directly but also any amount disbursed on your behalf for items such as federal and state taxes that the agency was unable to recover after the correction was made.

The reason your bill is \$524.15 greater than the difference between your net pay for 2016-01 and 2015-26, is because there was \$524.15 in disbursements made on your behalf that EPA was unable to recover. Of those disbursements, \$519.51 is from required tax withholdings that EPA could not recover. These tax withholdings do not reduce the amount of your indebtedness. B-261699, October 25, 1996. For pay period 2016-01 you paid \$193.42 more in federal tax and \$44.49 more in state tax than you did in pay period 2015-26. Because the incorrect promotion also caused backpay for PP 2015-22 through 26, you had payments withheld for "adjusted" federal tax of \$221.40 and "adjusted" state tax of \$130.60 for those pay periods. These additional taxes total \$589.91. IBC was able to credit you for the additional tax withholdings for pay period 2016-01, reducing the amount you owe for tax withholdings to \$519.51. However, the tax withholdings attributed to pay periods 2015-22 through 26 could not be credited to the 2016 calendar year because they were from 2015.

The CG has held that a federal agency may not waive part of an employee's debt that is represented by the amount withheld from that payment of income taxes. B-261699, October 25, 1996. In 1996 the CG reviewed a matter

in which seven employees were erroneously overpaid and, as a result, the agency withheld tax amounts that were higher than if they had been given their normal pay. But since the overpayment occurred shortly before the end of the fiscal year, the agency was unable to give them credit for what had been withheld. The CG concluded that reimbursements to employees for amounts withheld for tax purposes was a matter solely within the jurisdiction of the taxing authority.

Similarly, in your case, EPA withheld \$589.91 in federal and state taxes as a result of an administrative error. Of that amount, \$519.51 could not be recovered because the effective pay periods were from the prior calendar year, 2015. As the CG discussed in the 1996 opinion cited above, waiver is not the appropriate recourse to redeem the withheld taxes. Rather, it should be resolved through the Internal Revenue Service and the state taxing authority.

The remaining \$4.64 of the \$524.15 is comprised of an additional \$4 that was disbursed to your TSP Roth and a slight increase in Union dues. These are amounts, like the tax withholdings, that EPA did not recover and are therefore included in your gross overpayment. To correct for the amount that was overpaid to your TSP Roth, an adjustment was made to your TSP Roth in pay period 2016-02. EPA is not able to recover any additional amount that is paid to the Union and must be reimbursed by the Union to the member directly.

Lastly, you have requested that I waive \$100 of your debt, which represents the estimated cost of overnight shipment of your request and supporting documentation. As stated above, I have authority under 5 U.S.C. § 5584 to waive erroneous payments by the agency. The statute is not intended to reimburse employees for any incidental fees that may be incurred by pursuing a waiver request. Therefore, it is outside the scope of my authority to waive a portion of your overpayment as a reimbursement for shipping costs.

#### Conclusion

In accordance with CG caselaw, I find that it is not against equity and good conscience to collect the \$4,151.03 stated in your Bill for Collection. Your request for waiver is therefore denied.